SUPREME COURT OF THE UNITED STATES

No. 639.—October Term, 1967.

Minnie Brade Glona, Petitioner, v. American Guarantee & Liability Insurance Company et al. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[May 20, 1968.]

Mr. Justice Douglas delivered the opinion of the Court.

This suit was brought in the Federal District Court under the head of diversity jurisdiction to recover for a wrongful death suffered in an automobile accident in Louisiana. The plaintiff, a Texas domiciliary, was the mother of the victim, her illegitimate son. Had the Texas wrongful death statute [1] been applicable, it would, as construed, have authorized the action.[2] But summary judgment was granted on the ground that under Louisiana law [3] the mother had no right of action for the death of her illegitimate son. The Court of Appeals affirmed, rejecting the claim that the discrimination vio-

[1] Tex. Rev. Civ. Stat. § 4675.

[2] The Court of Appeals so indicated in this case. 379 F. 2d, at 546, n. 2. See *Galveston, H. & S. A. R. Co.* v. *Walker*, 48 Tex. Civ. App. 52, 106 S. W. 705 (1907).

[3] The applicable statutory provision is set out in *Levy* v. *Louisiana*, *ante*, at —, n. 1. As the Court of Appeals noted, Article 2315 of the Louisiana Civil Code, providing for wrongful death recovery, gives a cause of action to "the surviving father and mother of the deceased, or either of them. . . ." The statute does not state "legitimate" father or "legitimate" mother, but the Louisiana courts have held that decedent must be legitimate in order for an ascendant or sibling to recover for his death. *Sesostris Youchican* v. *Texas & P. R. Co.*, 147 La. 1080, 86 So. 551 (1920); *Buie* v. *Hester*, 147 So. 2d 733 (La. Ct. App. 1962). See also *Green* v. *New Orleans, S. & G. I. R. Co.*, 141 La. 120, 74 So. 717 (1917); *Jackson* v. *Lindlom*, 84 So. 2d 101 (La. Ct. App. 1955). See also *Vaughn* v. *Dalton-Lard Lumber Co.*, 119 La. 61, 43 So. 926 (1907).

lated the Equal Protection Clause of the Fourteenth Amendment. 379 F. 2d 545. We granted the petition for a writ of certiorari, 389 U. S. 969, in order to hear the case along with *Levy* v. *Louisiana, ante,* p. —.

Louisiana follows a curious course in its sanctions against illegitimacy. A common-law wife is allowed to sue under the Louisiana wrongful death statute.[4] When a married woman gives birth to an illegitimate child, he is, with a few exceptions, conclusively presumed to be legitimate.[5] Louisiana makes no distinction between legitimate children and illegitimate chilrden where incest is concerned.[6] A mother may inherit from an illegitimate child whom she has acknowledged and vice versa.[7] If the illegitimate son had a horse that was killed by the defendant and then died himself, his mother would have a right to sue for the loss of that property.[8] If the illegitimate son were killed in an industrial accident at his place of employment, the mother would be eligible for recovery under the Louisiana Workmen's Compensation Act, if she were a dependant of his.[9] Yet it is argued that since the legislature is dealiing with "sin," it can deal with it selectively and is not compelled to adopt comprehensive or even consistent measures. See *McLaughlin* v. *Florida,* 379 U. S. 184, 191. In this sense the present case is different from the *Levy* case, where by

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[4] *Chivers* v. *Couch Motor Lines,* 159 So. 2d 544 (La. Ct. App. 1964).

[5] La. Civ. Code Ann. Art. 184. See *Lambert* v. *Lambert,* 164 So. 2d 661 (La. Ct. App. 1964); *Harris* v. *Illinois Central R. Co.,* 220 F. 2d 134 (C. A. 5th Cir. 1955); cf. *Lewis* v. *Powell,* 178 So. 2d 769 (La. Ct. App. 1965).

[6] La. Rev. Stat. Ann. § 14:78.

[7] La. Civ. Code Ann. Arts. 918, 922.

[8] La. Civ. Code Ann. Arts. 2315, 922.

[9] La. Rev. Stat. Ann. §§ 23:1231, 1252, 1253; *Thompson* v. *Vestal Lbr. & Mfg. Co.,* 208 La. 83, 119, 22 So. 2d 842 (1945); see Note, 20 Tulane L. Rev. 145 (1945).

mere accident of birth the innocent, although illegitimate, child was made a "nonperson" by the legislature, when it came to recovery of damages for the wrongful death of his mother.

Yet we see no possible rational basis (*Morey* v. *Doud*, 354 U. S. 457, 465–466) for assuming that if the natural mother is allowed recovery for the wrongful death of her illegitimate child, the cause of illegitimacy will be served. It would, indeed, be farfetched to assume that women have illegitimate children so that they can be compensated in damages for their death. A law which creates an open season on illegitimates in the area of automobile accidents gives a windfall to tortfeasors. But it hardly has a causal connection with the "sin," which is, we are told, the historic reason for the creation of the disability. To say that the test of equal protection should be the "legal" rather than the biological relationship is to avoid the issue. For the Equal Protection Clause necessarily limits the authority of a State to draw such "legal" lines as it chooses.

Opening the courts to suits of this kind may conceivably be a temptation to some to assert motherhood fraudulently. That problem, however, concerns burden of proof. Where the claimant is plainly the mother, the State denies equal protection of the laws to withhold relief merely because the child, wrongfully killed, was born to her out of wedlock.

Reversed.